

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3       ERIKSEN RAUL LEIVA,

4                   Petitioner

5       v.

6       BRIAN WILLIAMS, et al.,

7                   Respondents

Case No.: 2:15-cv-01265-JAD-PAL

**Order Dismissing and Closing Case**

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9           This is a pro se 28 U.S.C. § 2254 petition for a writ of habeas corpus. The court granted  
10 respondents' motion to dismiss in part, concluding that certain grounds were unexhausted<sup>1</sup> The  
11 court gave petitioner Eriksen Raul Leiva 30 days to either: (1) inform this court in a sworn  
12 declaration that he wished to formally and forever abandon the unexhausted grounds for relief in  
13 his federal habeas petition and proceed on the exhausted grounds; OR (2) inform this court in a  
14 sworn declaration that he wished to dismiss this petition without prejudice in order to return to  
15 state court to exhaust his unexhausted claims; OR (3) file a motion for a stay and abeyance,  
16 asking this court to hold his exhausted claims in abeyance while he returned to state court to  
17 exhaust his unexhausted claims. The court expressly warned Leiva that failure to take one of  
18 these actions by the 30-day deadline would result in his petition being dismissed without  
19 prejudice and without further notice.<sup>2</sup>

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23 <sup>1</sup> ECF No. 16.

<sup>2</sup> *Id.*

Leiva filed a motion for stay and abeyance.<sup>3</sup> On February 22, 2018, the court denied the motion for stay.<sup>4</sup> The court then gave Leiva 30 days to (1) inform this court in a sworn declaration that he wished to formally and forever abandon the unexhausted grounds for relief in his federal habeas petition and proceed on the exhausted grounds; OR (2) inform this court in a sworn declaration that he wished to dismiss this petition without prejudice in order to return to state court to exhaust his unexhausted claims.<sup>5</sup> More than the allotted time has passed, and Leiva has failed to respond this court's order in any manner. Accordingly, the court dismisses this petition without prejudice for failure to follow the court's order.

**IT IS THEREFORE ORDERED** that **this** petition is **DISMISSED** without prejudice.

**IT IS FURTHER ORDERED** that a certificate of appealability is denied.

**IT IS FURTHER ORDERED** that the Clerk is directed to ENTER JUDGMENT accordingly and CLOSE THIS CASE.

Dated: February 6, 2019

U.S. District Judge Jennifer A. Dorsey

<sup>3</sup> ECF No. 17.

<sup>4</sup> ECF No. 23.

<sup>5</sup> *Id.*